



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

SEP 23 2011

Ms. L'Oreal Stepney, P.E., Deputy Director  
Office of Water (MC-122)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Dear Ms.Stepney:

The purpose of this letter is twofold, to inform you that (1) the proposed site-specific copper criteria for a portion of Mill Creek are technically-approvable, and (2) the temporary variance to the statewide copper criteria is approved.

The Environmental Protection Agency (EPA) has completed its review of the request for a temporary variance to the *Texas Surface Water Quality Standards* (TX WQS), which was submitted by letter dated September 2, 2011, to EPA for review and approval, as required by 40 CFR §131.20. The temporary variance applies to the statewide standards for copper for Mill Creek, which is an unclassified stream in the Sabine River Basin.

The City of Canton's wastewater treatment plant (TPDES # 10399-002) discharges treated domestic wastewater to Mill Creek; thence to segment 0506- Sabine River Below Lake Tawakoni. The presumed uses for Mill Creek are intermediate aquatic life and primary contact recreation. The designated uses for segment 0506 are high aquatic life, public water supply, and primary contact recreation. The variance authorizes a three-year period in which the Texas Commission on Environmental Quality (TCEQ) would adopt site-specific criteria for copper in Mill Creek. The proposed permit for the City of Canton contains a variance to standards for copper and interim requirements. If the criteria revisions are not adopted by TCEQ and approved by EPA, effluent limitations based on the statewide copper criteria will become effective in the next permit.

The City of Canton has recently completed a Water Effect Ratio (WER) study for copper. Prior to conducting the study, the facility prepared a work plan, which was reviewed by TCEQ and EPA. The WER study was performed using laboratory water and simulated downstream water (consisting of 100% effluent from outfall 001) to determine if site-specific water quality criteria would be more appropriate than the statewide copper criteria.

Our review of the final WER study indicates that the statewide water quality criteria for copper may be adjusted to account for site-specific physical and chemical interactions which mitigate the toxicity of copper to aquatic organisms. The methodology used to determine the site-specific criteria is consistent with EPA's guidance titled *Streamlined Water-Effect Ratio Procedure for Discharges of Copper* (EPA 822-R-01-005). From the study, final WERs of 7.71 for dissolved copper and 8.07 for total copper were calculated from toxicity tests conducted with a cladoceran (*Ceriodaphnia dubia*). However, in order for EPA to take a formal approval action under §303(c) of the Clean Water Act for this site-specific water quality standards revision, fulfillment of the public participation requirements found at 40 CFR Part 25 is necessary. The public participation process may be completed through the next revision of the TX WQS or through the next permit application process, as noted in §307.6(c)(9) of the TX WQS.

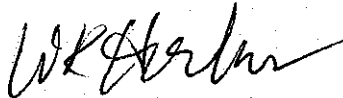
Section 7 of the Endangered Species Act states that "all Federal agencies shall...utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered and threatened species" and "each Federal agency shall insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species." EPA has determined that approval of the temporary variance to the statewide copper criteria will have no effect on federally-listed threatened and endangered species or on critical habitat.

The State Attorney General has previously certified that the variance provision in the TX WQS was duly adopted pursuant to State law. Public participation on the temporary variance was completed through the comment period on the proposed permit. The federal regulation for public participation (40 CFR §25.5(b)) states that public notification must occur 45 days prior to the date of a hearing. It also states that the notification period may be reduced to 30 days when EPA determines that there are no complex or controversial matters to be addressed. EPA has decided that the 30-day notification period is sufficient for this variance request. No comments were received during the public comment period on the proposed permit and variance.

EPA considers the issuance of the variance, in conjunction with the public review and comment process completed by TCEQ, to be consistent with and satisfy, the procedural requirements of 40 CFR §131.20. EPA is hereby approving the variance identified above, pursuant to §303(c) of the Clean Water Act and the implementing regulations at 40 CFR Part 131.

If you or your staff has any questions in this matter, please call me at (214) 665-7101 or contact Diane Evans of my staff at (214) 665-6677.

Sincerely,



Miguel I. Flores

Director

Water Quality Protection Division

cc: Larry Diamond, TCEQ – Wastewater Permitting Section (MC-148)  
Michael Pfeil, TCEQ – Standards Implementation Team (MC-150)  
Debbie Miller, TCEQ – Standards Group (MC-234)